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REMARKS

Applicant has carefully reviewed the office action mailed March 14, 2006 and offers the following remarks.

Claims 1-27 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2002/0191544 to Cheng et al. (hereinafter "Cheng"). Applicant notes that claims 6, 15, and 24 were previously cancelled, meaning only claims 1-5, 7-14, 16-23, and 25-27 are presently pending. Applicant respectfully traverses the rejection.

Initially, Applicant notes that Cheng only qualifies as prior art if it is entitled to the filing date of its provisional application; that is, the provisional application must properly support the subject matter relied upon to make the rejection in compliance with 35 U.S.C. § 112, first paragraph. MPEP § 2136.03. Applicant submits that the Examiner has failed to make a *prima facie* case showing that the provisional application properly supports the subject matter relied upon in the published application to make the rejection in compliance with 35 U.S.C. 112, first paragraph. Therefore, Applicant requests that if the Examiner continues to assert the Cheng reference, then the Examiner must point out with particularity where in the provisional application support may be found for the rejection.

In any event, even if the Cheng reference is entitled to the filing date of the provisional application, 35 U.S.C. § 102(e) requires that the invention be "...described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent" (emphasis added). However, Applicant conceived of the present invention prior to the filing date of Cheng's provisional application to which the published application claims priority. As such, Cheng does not qualify as prior art under § 102(e).

In order to establish that Cheng does not qualify as prior art under § 102(e), Applicant herein presents the Declaration of one of the inventors, Mark Earnshaw, under 37 C.F.R. § 1.131, illustrating conception of the present invention prior to the filing date of the provisional to which the published Cheng application claims priority. Based on the Declaration, Applicant asserts that the present invention was conceived of at least as early as November 17, 2000. (See Declaration of Mark Earnshaw, Paragraphs 3-6). In addition, the declarations of Applicant's representative Benjamin S. Withrow, and Assignee's in-house counsel, Curt Dodd, show that from a date prior to April 25, 2001, diligent action was taken by Applicant's representative, Benjamin S. Withrow,

and the assignee of the present application to constructively reduce the invention to practice through the filing of the instant patent application on December 13, 2001 (See Declaration of Benjamin S. Withrow, paragraphs 6-14; Declaration of Curt Dodd, paragraphs 2-14). Moreover, from a date prior to March 22, 2001 through the filing of the present invention, the inventors diligently worked to reduce the invention to practice in conjunction with their work on a draft standards submission that encompassed the invention described in the Invention disclosure (Declaration of Curt Dodd, paragraph 6). The earliest possible priority date of Cheng's published application is the filing date of the provisional application, April 25, 2001. Since the Declarations presented herewith show that the date of invention for the present application was prior to April 25, 2001 and that diligent action was taken from a time prior to April 25, 2001 through the filing of the present application on December 13, 2001 to reduce the invention to practice, Cheng does not qualify as prior art under 35 U.S.C. § 102(e). As such, the rejection of claims 1-5, 7-14, 16-23, and 25-27 as unpatentable over Cheng is improper and should be withdrawn. Applicant reserves the right to distinguish Cheng in the future if required.

In view of the discussion above, claims 1-5, 7-14, 16-23, and 25-27 are allowable. Reconsideration is respectfully requested. If any issues remain, the Examiner is encouraged to contact the undersigned attorney of record to expedite allowance and issuance of the present application.

<p>CERTIFICATE OF TRANSMISSION I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW TO:</p> <p>Examiner: <u>Haliyar, Venkatesh N.</u> Art Unit: <u>2664</u> Fax: <u>571-273-8300</u></p> <p><u>Michelle Heymann</u> Name of Sender</p> <p><u>Michelle Heymann</u> Signature</p> <p><u>8-14-06</u> Date of Transmission</p>

Respectfully submitted,

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